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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1953

No. 270

WALTER ROUSE,

*Petitioner,*

vs.

STATE OF MARYLAND,

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### STATEMENT OF THE CASE

Petitioner was indicted on a charge of conspiracy with one Willie Adams and others from August 1, 1947 to August 15, 1951 to violate the lottery laws of the State of Maryland. In the nisi prius court, a severance was granted to Walter Rouse and he was tried and convicted by a jury. At the outset of the trial, Rouse filed a Motion to Dismiss (R. 3). This Motion to Dismiss was based upon a defense of former jeopardy. However, upon hearing before the Court of Appeals of Maryland, Rouse argued on the basis that said Motion included the defense of res judicata in view of the

fact that he had previously been charged with certain substantive violations of the Maryland lottery laws, and had pleaded guilty thereto. The previous offenses were charged by indictments which set out certain violations, such as "possession of lottery paraphernalia", etc., and did not include any count charging a conspiracy or unlawful combination or confederation. On June 11, 1953, the Maryland Court of Appeals rendered an opinion (Hammond, J.) affirming the judgment and sentence of the court below, which opinion appears in the Record of the within case, beginning at page 63.

## QUESTION PRESENTED

*The sole question presented by the petition herein is whether or not a conviction, under a plea of guilty, of a substantive crime amounts to res judicata as to a subsequent prosecution for conspiracy involving, among other things, the substantive crime punished under the previous conviction.*

## STATEMENT OF THE FACTS

The facts as they appear in the Record show plainly and clearly that Petitioner had been engaging in the lottery business, known as the "numbers game", in the State of Maryland, together with numerous others, for an extended period, and was finally caught in the course of a raid upon certain premises in Baltimore on November 19, 1949. He was then with others charged with substantive violations of the lottery laws of the State of Maryland occurring on that particular day, and pleaded guilty to the said charges. He was subsequently indicted on August 24, 1951 for unlawfully conspiring with one William Adams and certain others to violate the lottery laws of the State of Maryland,

the period of said conspiracy being stated in said indictment as from August 1, 1947 to August 15, 1951 (R. 2 and 3). The evidence in the case consisted of testimony of the arresting officer (R. 6), showed that at the time of the raid there were seized 24,494 lottery slips, 268,182 lottery numbers, $15,807.35 played on them, representing 907 writers, 47 lottery tapes amounting to $27,477.21, making a grand total of money played of $43,284.56. Numerous others who were arrested at the same time testified in the conspiracy case, although not charged therein most of them having been employees or assistants of Rouse. Testimony was almost unanimous as to the fact that the "numbers game" had been going on for at least several days at this particular location and that, upon their conviction at the earlier trial, all of their fines were paid by Rouse as well as the expense of their bail bonds.

There can be no doubt whatever that Petitioner herein is guilty as charged, unless his present contention that his prosecution was barred under the doctrine of res judicata can be maintained.

## ARGUMENT

### THE FORMER CONVICTION OF A SUBSTANTIVE CRIME DOES NOT, ON THE THEORY OF RES JUDICATA OR DOUBLE JEOPARDY, BAR PROSECUTION FOR CONSPIRACY TO COMMIT THE CRIME.

It has long been recognized both by the courts of Maryland and by this Honorable Court that an acquittal of a particular crime does not bar a subsequent prosecution for a conspiracy to commit the crime. *Scarlett v. State,* .... Md. ...., 93 A. 2d 753; *Gilpin v. State,* 142 Md. 464, 121 A. 354; *Pinkerton v. United States,* 328 U. S. 640, 90 L. Ed. 1489; *Sealfon v. United States,* 332 U. S. 575, 92 L. Ed. 180.

While it cannot be disputed that the principle of res judicata applies in criminal cases, the Petitioner's contention is that the evidence used to convict him in the conspiracy was identical with that used in the trial on the charge of commission of the substantive crimes. This claim is inaccurate in fact, because a cursory glance at the record will show that additional evidence to establish the conspiracy was introduced in the second trial greatly in excess of that required to prove the offense beyond all reasonable doubt. Furthermore, the present case differs from some of those cited above in that, in this case, the Petitioner was not acquitted at the previous trial, but was actually convicted on a plea of guilty on two of the substantive offenses therein charged. Appellant has only cited two cases as authority in his Brief, namely, *Sealfon v. United States, supra;* and *Kruelewitch v. United States,* 336 U. S. 440, the first of which bears out the contention of the Respondent herein as to the general principle that the substantive offense and a conspiracy to commit it are separate and distinct offenses, and the case was reversed only because, in order to prove the second offense it was necessary to prove an agreement which had been necessarily adjudicated to be nonexistent at the former trial. This is, of course, a proper application of the doctrine of res judicata, but is entirely distinct from the facts in the case at bar.

The *Kruelewitch* case, *supra,* is not applicable to the facts of the present case, determining only that Federal prosecutions must be sustained by statutory authority and a question of hearsay evidence in the nature of a statement made by an alleged co-conspirator. A cursory examination of the facts of the *Kruelewitch* case will indicate that it has nothing whatsoever to do with the case at bar.

In Petitioner's Brief, he states under "Reasons Relied on for Granting Writ", that the Maryland Court of Appeals ignored the fact that the trial court, in fixing sentence, had increased same ten-fold over what it customarily imposed. This statement not only has nothing to do with the present contention of the Petitioner, but does not even appear in the Record as a fact. Further, in Petitioner's Statement of the Case (p. 6 of his Brief), it is stated that the evidence in the trial of the instant case was identical as to the facts proven with that in the earlier trial, which does not appear in the Record, as there was a great mass of additional evidence presented at the second trial, as can readily be understood, not only for the reason that the proof required to show conspiracy must be different from that to show the commission of a substantive offense, but also ignores the fact that Petitioner pleaded guilty at the earlier trial. Petitioner's further statement on page 6 that Defendants were expressly punished for a combination and confederation in the nature of a conspiracy at the earlier trial does not appear in the Record, and, as a matter of fact, no such charge or indictment was made against them at that time.

It is obvious from the Record that the State has proven the conspiracy charged in this case, not by relying solely upon the identical evidence presented in the previous case, but by re-introducing that testimony for whatever it might be worth as part of the whole proof, and adding thereto sufficient additional testimony not used before to prove conclusively Petitioner's guilt of conspiracy as charged. The Court is respectfully referred to the opinion of the Court of Appeals of Maryland (Hammond, J., R. 63) which exhaustively considers the various facets of the law as applied to the within case and present Petitioner's contentions with respect thereto.

## CONCLUSION

It is respectfully submitted, for the reasons stated herein, that the Petitioner has not been denied due process of law or any other right accorded him under the Constitution of the United States or any statute passed pursuant thereto, and that the Petition should therefore be denied.

Respectfully submitted,

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